Scott. II-27—45,004—14-11-29.

Law (1931) Department.
General

MS SERIES.

G.O. No. 17

DATED 6. 1. 31

[Despatch Abstract.]

Legal assistance - Payment to pleader - defence of a forest[illegible] in the South Kanara district in a criminal prosecution - Payment sanctioned deducting compensation.

Law (General) DEPARTMENT.

4763B 10 11 30

Received ..... 192 Registered 192

GOVERNMENT OF LAW 10 NOV 1930

3516/22-8-30 3287/5-9-30

Vakil's fees - Vakil engaged to defend Forester Muddayya - C.C.No. 99/29 - file of the Sub-divisional Magistrate, Puttur - payment of Rs.60/ sanction - requested.

ENCLOSURES.
No .....
.....
Spare copies .....

Ref. C.1-~~No.~~ 9640-30.

Station Mangalore *Dated the* 7th November 1930.

From (Name) G. W. Wells, Esquire, M.A., I.C.S.,

(Designation) Dt. Magistrate of South Kanara.

To The Secretary to the Government of Madras,

Law (General) Department,

Madras.

Sir,

As requested by the Dt. Forest Officer, Mangalore South in his letter Cur.No.3689-29/C.6 dated 28-12-29, I authorized Forester Muddayya to engage for his defence in C.C. No.99/29 on the file of the Sub-divisional Magistrate, Puttur a case filed against him for offences said to have been committed in the discharge of his official duties, the services of a Vakil approved by the Tahsildar of Puttur Taluk at a rate of fee not exceeding Rs.15 per day of trial and Rs.75/- for the whole case.

B

2. The case was discharged under section 253 (1) Cr.P.C. and the Forester was awarded a compensation of Rs.50/-. Please see copy of the judgment enclosed.

Complainant, however, appealed against the order directing compensation to the Sessions Judge, South Kanara [illegible] modified the order by reducing the amount of compensation to Rs. [illegible]. Please see extract from the appeal judgment in C.A. 25 and 26/30 — enclosed.

4. The Vakil engaged has now claimed Rs.75/- and is entitled to this amount according to the settlement already made. I have asked the Forester to pay to the Vakil Rs.10 already paid to him as compensation and recommend that Government may be pleased to sanction the payment of Rs.65 as the Forester has been discharged. The Vakil's receipt for the fee is enclosed.

Your obedient servant,

[illegible]
For Dt. Magistrate.

8.11.30

In the court of the Sub-divisional I Class Magistrate, Puttur Division.

Judgment in Calendar Case No.99 / 1929 on the file of the Sub-divisional I Class Magistrate of Puttur Division, dated the 14th day of July 1930.

Present:- M.R.Ry. T. N. Mallikarjuna Ayyar, Avl., B.A.,

--

Complainant	...	Hukra Gowda.
Accused	...	1 Muddya. 2 Aithappa Gowda.
Offence	...	Voluntarily causing hurt and voluntarily causing grievous hurt. Section 323 and 325 I.P.C.
Finding	...	No case made out.
Order	...	Discharged under section 253 (i) C.P.C. Complainant directed to pay Rs.50/- to 1st accused and Rs.25/- to 2nd accused as compensation under section 250 C.P.C., in default to undergo Simple Imprisonment for 30 days.

Judgment.

This is a private complaint filed by one Hukra Gowda of Mala in Konaje village against Muddayya - a Forester - and another Aiyathappa for offences under sections 325 and 323 I.P.C. said to have been committed by them on 17-9-1929.

2. The prosecution story is as follows:-

When the complainant (P.W.1) was in his house in Mala A 2 came and called him saying that he was wanted by A 1. P.W.1 went with A 2 to a pathway near but outside the Reserve forest where A 1 was sitting. P W 2 was also there. Then A 1 asked P.W.1 to carry a bag of rice to his (A 1's) house at Kokkala about a mile away from there stating that P.W. 2 had carried the bag up to there and that he (A 1) had promised to leave him (P.W.2) when a substitute was got. P.W. 1 declined to carry the rice bag stating that he had to go to his land lord's house with plantain leaves for a festival. Thereupon A 1 asked P.W. 1 his name and his father's name and whether he had no cattle. P.W.1 refused to give his father's name. Then A 1 pushed him, beat him with an umbrella. P.W.1 took a stick and beat A 1 on his head. A 2 seized the stick and held P.W.1 by the hand from behind. Then A 1 beat P.W.1 again with his umbrella. One blow fell on his head and two on his hands. P.W. 1 sat down. At this juncture P.W. 2 who had carried the rice bag all along offered to take it up to the house of A 1. Then the accused went away and P.W. 2 carried the rice bag.

3. Including the complainant four witnesses have been examined for the prosecution. P.W.1 speaks to the facts mentioned in para 2. P.W. 2 is the person who carried the rice bag from Branthodu. He states that when he was asked to carry the rice bag to the house of the Forester, he said that he would carry it only half way as he had to do thatching work to the new roof of his house. This witness speaks to the details of the beating given to P.W. 1 and he is the only eyewitness to this offence. P.W. 3 came to the scene after the beating was given and after A 1 and A 2 left the place. This witness gave water to P.W.1 and took him to his brother-inlaw's house. He only learnt from P.W. 1 that he (P.W.1) was beaten by the Forester. P.W. 4 is the Medical Officer in -----

charge of the Local Fund Dispensary, Kadaba. He examined the complainant and granted the wound certificate Exhibit A. He observed 4 injuries on the person of P.W.1 - three ---- contusions and one lacerated would. One injury was of serious nature and the rest are simple injuries.

4. The accused deny the offence and state that this ---- complaint was filed as a counterblast to C.C.99/29 against P.W.1 and three others who were charged by A 1 for having obstructed him when impounding cattle which were grazing in the reserve without permits and for having caused him (A 1) injuries on his person. That case was tried separately and disposed of today by this court.

5. There are many circumstances which clearly convince me that this case was simply got up to serve as a defence in the counter case. The offence is said to have been committed on 17-9-29 but the complaint is filed only on 11-10-29 and there is no explanation whatever for the long delay. P.W.1 says that he was at Kadaba undergoing treatment as an out-patient in the hospital and he had met the Sub-Inspector of Police, and many times while there. He did not complain or tell him anything about this offence though he had known that the counter case and the counter case had been filed against him. The evidence of P.W.2 is merely a cock and bull story. He lives mostly by doing cooly work. All his land has been mortgaged and he has allowed interest to accrue for four or five years. He is a man of no status and it is not difficult to get witnesses of this type to swear to anything. I am not able to believe his evidence at all and I reject it as entirely false. It appears to have been purposely got up.

6. P.W.4 is the Medical Officer in charge of the Local Fund dispensary at Kadaba. He states that P.W.1 came to him at 5 P.M. on 17-9-29 for treatment as an out-patient for the injuries on his person. He has granted the wound certificate Exhibit A wherein this witness describes four injuries with measurements. It is dated 8-10-29 and the witness states that he gave the certificate only on 8-10-29 though the complainant had come to him on 17-9-29. He

extraordinary circumstances with regard to this certificate is that the dimensions and details of the injuries were noted by the Doctor in the put-patient prescription chit when the complainant first came to him on 17-9-29 and that with reference to these entries in the prescription chit the Doctor gave the wound certificate on 8-10-29. That prescription chit is not now available anywhere. In all my experience I have not come across any case in which the Doctor enters in the out-patient prescription chit the details and dimensions of the injuries. The Doctor states that he does not remember for what purpose he noted the dimensions of the injuries in this particular case. The whole thing looks highly suspicious if not entirely false. I am unable to believe either the Doctor or the wound certificate given by him. But for this certificate the complainant would not have probably filed this complaint at all on 11-10-1929.

7. I find that no case is made out against the accused and I discharge them under section 253-1 C.P.C.

8. The complainant when asked to explain why he should not be directed to pay compensation to the accused merely states that his case is true. For reasons explained above I find that this case is false and frivolous and under section 250 C.P.C. I direct that the complainant should pay as compensation Rs.50/- to the 1st accused and Rs.25 to the second accused or in default to undergo simple imprisonment for 30 days

Sd/- T. M. Mallikarjuna Ayyar,
14-7-30,
Sub-divisional Magistrate

Appendix.

Witnesses examined for Prosecution.

1. Hukra Gowda.
2. Thammaya Gowda.
3. Perade Sukraya Gowda.
4. Dr. S.N. Alekal.

Defence - Nil.

Exhibits filed for prosecution.

A 8-10-29. Would certificate granted to P.W.1.

Defence.

I 18-9-20 - do. - to 1st accused.

7

aterial objects marked Nil.

Sd/- T. L. [illegible] A.J.M.

Sub-Divisional Magistrate.

(True [illegible])

[illegible]

24.10.30

In the Court of the Sessions Judge of South Kanara.

The 28th day of August 1930.

Present.-

H.R.Ry. K. S. Ramaswami Sastri, Avl., B.A., B.L.

Judgment in Criminal Appeal No. 25 & 26/1930.

From what Court the Appeal is preferred.	Sub Divisional Magistrate, Puttur.
No.of the case in that Court.	C.C.Nos. 98 & 99 of 1929.
No.of the appeal.	C.A.Nos. 25 & 26 of 1930.
Name and description of the appellant.	C.A.No.25/30.- 1. Hukra Gowda, son of Konta Gowda, residing in Konaje. 2. Kunda Gowda, son of Subba Gowda, residing in Buntra. 3. Putta Gowda, son of Koraga Gowda, residing in Aithoor. 4. Kariappa Gowda, son of Koraga Gowda, residing in Aithoor. C.A. 26/30.- Hukra Gowda, son of Konta Gowda residing in Konaje.
The sentence and law under which it was imposed in the lower Court.	C.C. 98/29.- 1st accused to undergo rigorous imprisonment for one month under section 332 I.P.C. Accused 3 & 4 to pay a fine of -- rupees twenty five each under section 186 -- I.P.C. in default to suffer rigorous imprisonment for three weeks each. Accused 2 guilty under section 186 I.P.C. and released on -- probation of good conduct on his executing a bond for Rs. 25/- to keep the peace and be of good behaviour for a period of six months. C.C.99/29.- Complainant directed to pay -- Rs.50/- to 1st accused and Rs. 25/- to 2nd accused as compensation under section 250 -- C.P.C., in default to undergo simple imprisonment for 30 days.
Whether confirmed, modified or reversed and, if modified, the modification..	C.A. 25/30.- Confirmed. compensation amount in the case C.A. 26/30.- Modified by reducing the of -- the I accused to Rs. 10/- and in the case of 2nd accused to Rs. 5/- and in default of payment of each compensation amount to undergo simple imprisonment for one week. -- Excess amount of compensation, if collected, should be refunded.

Prosecution.	Filing.	Date of, or on which Notice issued by Court to - appear.	Appellant ordered to appear.	Hearing.	Order.
C.A. 25/30.					
2-8-1930.	2-8-30	4-8-1930.	25-8-1930.	25-8-30	28-8-30.
C.A. 26/30.					
2-8-1930.	do.	do.	do.	do.	do.

This appeal coming on for hearing before me; upon perusing the -- petition of appeal and the record of the evidence and proceedings, and upon

duly considering the same after hearing the arguments of Mr. C. Somashekar Rao, Pleader for the appellants in both the appeals and the Public Prosecutor contra, I do adjudge and pass the following

JUDGMENT.

XX XX XX

6. In regard to Criminal Appeal No. 26 of 1930, I have no doubt that the order of discharge passed by the Lower Court is -- correct. The complaint was filed only on 11-11-1929. Evidently the case was filed as a counterblast to the Forester's complaint. I agree with the learned Magistrate that the evidence in support of the complaint in C.C.No. 99 of 1929 is interested and unsatisfactory.

7. I think, however, that the compensation awarded is very heavy and disproportionate, especially therefore bear in mind the -- serious injuries sustained by the complainant. He was under -- treatment till 8th or 9th October 1929. I reduce the compensation in the case of the 1st accused to Rs. 10/- and in the case of the 2nd accused to Rs. 5/- and order simple imprisonment for one week in default of payment of each compensation amount. The excess -- compensation amount, if collected from the complainant, should be refunded to him.

Mangalore,)
)
28th August 1930.)

(Sd) K. S. Ramaswami Sastri,
Addl. Sessions Judge.

(True Copy)

K.S.Ramaswami Sastri,
Addl.Sessions Judge.

To the Registrar, High Court, Madras.
To the District Magistrate, South Kanara.

True Copy.

A Krishnamurthy 23/10

for Dt.Magistrate.

23.10.30

H. Pundarik Bhat,
B. A., B. L
Vakil.

10
Puttur, S. K.
Dated 29 - 10 - 1930.

Received from the District Magistrate of South Kanara, Mangalore rupees sixty five Rs 65-0-0 as remuneration fees for having defended forester Muddayya in C.C $\frac{99}{29}$ on the file of the first class Magistrate Puttur. South Kanara as per Dt. Magistrate's Circular L. Disc C $\frac{1}{12651/27}$ dated 30-12-29.

H. Pun

Bhat Pleader.
29.10.30

4763D

Cavel (W) Deptt

Memo no 4763 B-1 dt 19. 11. 30

34/19.11.

19/11

Legal Assistance - Fee to Pleader - Defence of a forester - South Kanara Dt.

From the Dist. South Kanara
Ref no. C-1- 9640-30 dt 7.11.30.

The D. M. South Kanara is requested to state the number of appearances put in by the pleader engaged for the defence and the nature of the work done by him during each appearance

To the Dist. South Kanara

Dpd. by Mannargudi
19.11.30

100/-
8.11.30.

14/11

13/11

LAW (GENERAL) DEPARTMENT. C.F. 30.

12

Lgen: 5234-B

10-12-30

Received ..... 192 *Registered* 192

Subject.

Legal assistance - fees to pleader - defence of a forester - further information - reported.

Reference:- Government Memorandum No. 4763-B-1, dated 19th November 1930.

11 folios

ENCLOSURES.

No .....

.....

Spare copies .....

Ref. C1 - ~~No.~~ 9640-30.

Station Camp Manjeshwar *Dated the* 6th December 1930. ~~192~~

From (Name) G. W. Wells, Esquire, M.A., I.C.S.,

(Designation) Dt. Magistrate of South Kanara.

To The Secretary to the Government of Madras,

Law (General) Department,

Madras.

Sir,

8.1.30, 20.1.30, 3.2.30 } x-ns of Pros
16.3.30 further cross-exn but not done
2.7.30 argued
14.7.30 judt pronounced

Stamp 5 Rs = 75

The Vakil appeared in Court in connection with the case on 8th January 1930 (1), 20th January 1930 (2), 3rd February 1930 (3), 6th March 1930 (4), 7th July 1930 (5) and 14th July 1930 (6). On the first three days, the Vakil conducted the cross-examination of the P.Ws. and on 7th July 1930 argued the case for the defence. On 6th March 1930, the case was posted for further cross-examination in the Sub Divisional Magistrate's camp at Hosdrug but no work was done as a stay order was received from the District Magistrate and on the 14th July 1930, the Judgment was pronounced. The Vakil appeared both on 6th March 1930 and 14th July 1930 though he did no work in Court. On the 6th March 1930, the Vakil attended the Court of the Sub Divisional

13

Magistrates in camp and spent the day for the case though no work was actually done. He has thus devoted five days for the case and is entitled to the fee of Rs.75/- at Rs.15/- a day.

Your obedient servant,

For Dt. Magistrate.

8.12.30

M.D'S.8/12.

Law (Genl) Deptt

4763B From the D. M. South Kanara. Ref to C-1-9640-30 dt 7.11.30.

Subject:- Legal Assistance - Fee to Pleader defending a prisoner in the South Kanara District.

The Dm recommends payment of a fee of Rs 75 to the pleader engaged for the defence in the above case. The compensation of Rs 10 90 to be declined. The net amount suggested is thus Rs 65.

A - at ₹ 5-9 ₹: 4 37 ½ (J) 1-3-31

Though a District Magistrate is competent to allow a maximum fee of Rs 35/- per diem subject to a maximum of Rs 100 for a whole case, he has no power to fix a fee of Rs 75 for the whole case unless it lasted for at least three days. For if the case lasted for a shorter period he would be exceeding the prescribed daily limit of Rs 35/-. It has not been stated how long the case lasted. Submitted that the information may be obtained. Draft submitted may be sent to Development for acceptance.

B at ₹ 1 CF

Dev: 2960-I 15-11-80

ASSISTANT SECRETARY TO GOVERNMENT DEVELOPMENT DEPT. 15 NOV 1930

13.11.30.

Legal no: 4763 B-1 14 11 30

17/11

Dev 210

2

Dev. Dept

To M.S.

Please see the Govt (Genl). Dept's note at P.1-ante. The draft may be accepted & the case returned to Govt (Genl).

Dev. 2960 I [illegible]-1
17-11-30.

accepted
17/11/30 Govt (Genl).

15/11/30 15-11-30

17 NOV

Land (genl) Dept Lgnl: H 89 B
17.11.30.

May issue.

18-11.30

18/11

Issued as memo no 4763 B-1 dt 19.4.30. to the Dir. Santa Kamara. U 11 Cf.

From the Dir. Santa Kamara. Report C-1-9640-30 dt 12-13 Cf. (5234 B).
dated 6-12-30.

In the circumstances now reported by the Dir. at dt 12-13 Cf, the payment to the pleader of a fee of Rs 75- for 5 days at Rs 15- per diem seems reasonable. The sum of Rs 10/- ordered to be paid as Compensation may be deducted from the Rs 75- allowed leaving Rs 65- to be sanctioned.

Dev. 3270-I
18-12-30

Draft submitted Development and Finance Dep. for acceptance.

Govt: 4763 B-2
17.12.30.

18.12.30.

Dev. fin. 19/12

R

3

Dev. Dept

[Development proceedings note on P. 2 ante]

To M.S.

. The draft may be accepted + the file

. passed on to Fin.

3
18/12/30

20/12/30

Dev. 3270 I/30-1
20-12-30

Finance ER

+ E.H's report in pp 12-13 C/F. The draft order may be accepted and the Case returned to Law Dept.

ASST. SECRETARY TO GOVT.
22 DEC 1930
FINANCE DEPT.

23/12/30

23/12/30

23/12/30

Law Dept.

41893 SR/+

Fin. W. 41893 SR-1
27/12/30

Law Dept. 57 B
5731

Sectt. II-5(a)—50,406—5-11-29.

Law (General) DEPARTMENT.

	Date.	Initials.
When received for Fair-copying.		
When copied ..		
When examined ..		
When signed ..		
When despatched ..		

Legal Assistance

Fee to Pleader - Defence of Forester in the Karwar Dt Criminal Prosecution - Payment sanctioned debiting Contgt - Payment - sanctioned debiting Compensation.

READ AGAIN G.O. No. ....., dated 19

" " " " ..... " 19

READ ALSO:—

C. No. 47638 From the Dist Forest Officer, North Kanara Ref. No. C-1-9640-30 dated 7-11-1930.

" " ..... To the Dist. Forest Officer, North Kanara. Memo No 47638-1 dt 19.11.1930.

" " 52348 From the Dist. Forest Officer, North Kanara. Ref No C-1-9640-30 dt 6.12.1930.

ORDER.

No. 17, dated 6-1-1931.

Mg.

The Govt sanction an expenditure of Rs 65 (Rupees Sixty five only) as pleader's fee in connection with the defence of Forester Muddayya in C.C. No. 99 of 1929 on the file of the Sub-Divisional Magistrate Ankola. This sanction is irrespective of the Compensation of Rs 10/- awarded to the forester

2 The expenditure will be debited to the 24-b- Administration of Justice - Law Officers - Supplies & Services - Forest - Miscellaneous - mainly fees to pleaders under that Service" in the BE for 1930-31

KD 13.12.30.

Precedent - GO 3287 dg 5-8-30 (F)

Dept. [illegible]

To the Dist. Forest Officer North Kanara
To the Accountant General through Fin.
To the Development Dept.
} q.r.o.